FILE COPY

Office Supreme Court, U. S.
FILED
FEB 13 1943
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

653307
Supr. Ct.

No. 732 [redacted] 7

LYNCH CORPORATION, THOMAS CHANDLER WERBE, E. G. BRIDGES, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

STATEMENT AS TO JURISDICTION.

LEHR FESS,
FRANK S. LEWIS,
Counsel for Appellants.

DOYLE & LEWIS,
PENCE, O'NEILL & DIVEN,
Of Counsel.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Jurisdiction	1
Statutes involved	2
The issue and the ruling below	3
Questions are substantial	5

Table of Cases Cited.

Atlantic Cleaners and Dyers, et al. v. *U. S.*, 286 U. S. 427	2
Interstate Circuit, Inc. v. *U. S.*, 306 U. S. 208	2
Standard Oil Co. v. *U. S.*, 221 U. S. 1	5
Sugar Institute v. *U. S.*, 297 U. S. 553	2
U. S. v. *American Tobacco Co.*, 221 U. S. 106	

Statutes Cited.

Clayton Act of October 15, 1914, Sec. 3, 38 Stat. 730 (15 U. S. C. 14)	3
Expediting Act of February 11, 1903, Section 2 as amended (32 Stat. 823; 36 Stat. 1167; 15 U. S. C. 29)	2
Judicial Code, Section 238, as amended (36 Stat. 1157, 38 Stat. 804; 43 Stat. 938; 28 U. S. C. 345)	2
Sherman Anti-Trust Act of July 2, 1890, Sections 1 and 2 as amended (15 U. S. C. 1, 2)	2

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO,
WESTERN DIVISION

Civil Action No. 4426

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HARTFORD-EMPIRE CO., ET AL.,
Defendants.

STATEMENT OF JURISDICTION.

In compliance with Rule 12 of the Supreme Court of the United States as amended, Lynch Corporation, Thomas Chandler Werbe, E. G. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie, and N. M. McCullough, submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this cause on October 8, 1942. A petition for appeal was filed on the 3rd day of December, 1942, and is presented to the District Court herewith on the 3rd day of December, 1942.

Jurisdiction.

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred

by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823; 36 Stat. 1167; 15 U. S. Code, Sec. 29) and Section 238 of the Judicial Code as amended (36 Stat. 1157; 38 Stat. 804; 43 Stat. 938; 28 U. S. Code, Sec. 345). The following decisions we submit sustain the jurisdiction of the Supreme Court to review the judgment in this cause:

Interstate Circuit, Inc. et al. v. *U. S.*, 306 U. S. Rep. 208;

Sugar Institute et al. v. *U. S.*, 297 U. S. Rep. 553;

Atlantic Cleaners & Dyers et al. v. *U. S.*, 286 U. S. Rep. 427.

Statutes Involved.

The Sherman Anti-Trust Act of July 2, 1890, as amended (15 U. S. Code, Sections 1 and 2):

"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

The Clayton Act, of October 15, 1914, 38 Stat. 730 (15 U. S. Code, Sec. 14):

> "Sec. 3. It shall be unlawful for any person engaged in commerce, in the course of such commerce, to * * * make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States * * * or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, ware, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effects of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

The Issue and the Ruling Below.

On the 11th day of December, 1939, the appellee filed its complaint charging the defendants with violations of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act, and praying that such violations be enjoined and that the Hartford-Empire Company be dissolved.

The complaint alleges that certain of the defendants entered into a combination and conspiracy on or about the 6th day of October, 1922, for the purpose of acquiring and maintaining monopolies of patents covering the manufacture and licensing of glassmaking machinery, the manufacture and distribution of glassmaking machinery, and the manufacture, distribution, and sale of glass products, in restraint of interstate commerce by means of restrictions on machinery and restrictions on the use and production of glass containers and heat-resisting ware.

The complaint further alleges that subsequently to October 6, 1922, and from time to time thereafter, other

defendants joined said combination and conspiracy and became participants therein to the extent that said participants, representing substantially all the large glass manufacturers and glass machinery manufacturers in the United States, dominated the glass industry in the United States as well as the glassmaking machinery.

The complaint further alleges that Lynch Corporation engaged in the manufacture of forming machines, was induced to join said conspiracy on the 23rd day of August, 1933; that in the year 1927, 70% of the narrow-neck bottling machine formers were Lynch machines; that between the years 1927 and 1933 the defendants, Lynch Corporation and Hartford-Empire Company, engaged in an extended controversy at a cost to Lynch of approximately $250,000 regarding the priority of the respective patents for forming machinery in which they had interests; that in June 1933 the United States Patent Office held against Lynch and that on the 23rd day of August, 1933, defendants, Lynch Corporation and Hartford-Empire Company, entered into an agreement by which Lynch granted to Hartford a non-exclusive license with regard to its forming patents and Hartford granted to Lynch a non-exclusive license under Hartford's patents for forming machines together with a license to make and deliver machines to anyone who had obtained a license therefor from Hartford; that in 1937 Hartford-Empire Company, Owens-Illinois Glass Company, and Lynch Corporation, combined to acquire the patent rights of their remaining competitors, O'Neill Suction Company and Ed Miller Machine & Mold Company, and by reason thereof they achieved a virtual monopoly and dominating position with respect to patents covering glass-forming machinery in the United States.

Lynch Corporation and associated defendants contended:

1. That they did not join the alleged combination and conspiracy;

2. That they did not cause any restraint of interstate commerce;

3. That the agreement entered into between Lynch Corporation and Hartford-Empire Company was a valid and legal cross-licensing agreement;

4. That there was no issue in the case involving the acquisition of the business of Ed Miller Machine & Mold Company; and

5. That the issues in the case have become moot, because of all of which Lynch Corporation and associated defendants made a motion at the conclusion of the plaintiff's case for dismissal, which was denied without substantial grounds therefor.

On the 8th day of October, 1942, after a trial and arguments, Judge Frank L. Kloeb entered a judgment holding against the contentions of Lynch Corporation and associated defendants upon authority of *Standard Oil Co.* v. *U. S.*, 221 U. S. 1, and *U. S.* v. *American Tobacco Co.*, 221 U. S. 106.

Questions Are Substantial.

The appellants believe that the District Court erred in its findings contrary to the contention of Lynch Corporation and associated defendants; that said Court adopted findings which are not supported by substantial evidence; that said Court adopted findings relating to these appellants which are not supported by substantial evidence; that said Court erred in finding that Lynch Corporation and associated defendants joined the alleged conspiracy; and in basing his findings largely on matters not in issue; that said Court erred in finding Lynch Corporation violated the Clayton Act; that said Court erred in the remedy provided in said judgment:

1. By imposing unreasonable and unnecessary orders relating to present and future patents of the defendants in excess of those requested in the prayer of the complaint or contemplated by the opinion of the Court;

2. In requiring Lynch Corporation to sell assets acquired from Ed Miller Machine & Mold Company;

3. In requiring defendants to furnish drawings and patents of its machinery to any applicant therefor covered by future patents;

4. In requiring defendants to license without royalty any applicant to make or have made machines embodying inventions covered by any patents now owned by defendants, all of which are in the nature of a penalty, are confiscatory, and in excess of what is contemplated by the Sherman and Clayton Acts.

Respectfully submitted,

DOYLE & LEWIS,
PENCE O'NEILL & DIVEN,
Attorneys for Lynch Corporation and Associated Individual Defendants.

FRANK S. LEWIS,
LEHR FESS,
Of Counsel.

(Clerk's Note—The opinion is printed as a separate volume.)